



Signed and Filed: February 8, 2023

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5 HANNAH L. BLUMENSTIEL
6 U.S. Bankruptcy Judge

7 UNITED STATES BANKRUPTCY COURT

8 FOR THE NORTHERN DISTRICT OF CALIFORNIA

9 In re:) Case No. 22-30405 HLB
10 THAI MING CHIU,)
11 Debtor.) Chapter 13
12 SIMON THAI MING CHIU,)
13 Plaintiff,) Adv. Proc. No. 22-3114 HLB
14 v.)
15 CHARLES LI,)
16 Defendant.)
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TENTATIVE RULING ON CHARLES LI'S MOTION TO DISMISS

This adversary proceeding is scheduled to come before the court on February 16, 2023 for a hearing on Defendant Charles Li's motion to dismiss.¹ Plaintiff/Debtor Thai Ming Chiu opposed the Motion.² The court has no need for a reply. For the reasons that follow, the court is inclined to **GRANT** the Motion and to **DISMISS** this action **WITH PREJUDICE**.

27 ¹ Dkt. 9 (the "Motion").
28 ² Dkt. 11 (the "Opposition").

A. Introduction

2 Plaintiff Chiu's complaint³ seeks a judgment declaring void
3 a judgment entered in Defendant Li's favor by the San Francisco
4 Superior Court on November 16, 2018,⁴ as well as the judgment
5 lien arising from an abstract of judgment recorded by Mr. Li on
6 or about November 26, 2018.⁵ Mr. Chiu has expressly consented to
7 entry of final orders and judgment by this court.⁶ By filing the
8 Motion, which seeks dismissal of this action with prejudice,
9 Defendant Li has implicitly consented to entry of final orders
10 and judgment by this court.

11 Notwithstanding the parties' consent, the court is inclined
12 to find that it lacks subject matter jurisdiction over this
13 action, based on the Rooker-Feldman doctrine. Alternatively, the
14 court is inclined to find and conclude that the doctrine of issue
15 preclusion bars relitigation of the propriety of the Second
16 Amended Judgment in this action.

B. Statement of Facts

18 The parties do not dispute the following facts, which this
19 court paraphrases from three decisions issued by the California
20 Court of Appeals for the First Appellate District, Division 3.⁷

²² ³ Dkt. 1 (the “Complaint”).

⁴ Dkt. 9-2 (Declaration of Duy Thai in Support of Motion; the "Thai Decl."), **Ex. B** (the "Second Amended Judgment").

²⁴ ⁵ Dkt. 9-2 (Thai Decl.), **Ex. C.**

25 | 6 Dkt. 1 (Complaint), ¶ 4.

26 ⁷ Dkt. 9-2 (Thai Decl.), **Ex. A** (May 31, 2018 decision issued in Li v. Chiu,
Case No. A149849; the "May 31, 2018 Decision"); **Ex. D** (Dec. 22, 2020 decision
issued in Li v. Chiu, Case No. A156760; the "Dec. 22, 2020 Decision"); **and Ex.**
27 **E** (August 1, 2022 decision issued in Li v. Chiu, Case No. A163866; the "Aug.
28 1, 2022 Decision").

1 In 2010, Mr. Li sued Mr. Demas Yan (a disbarred attorney and
2 Plaintiff Chiu's brother-in-law) in San Francisco Superior Court⁸
3 (the "State Court") for professional negligence arising from Mr.
4 Yan's representation of Mr. Li in several lawsuits involving
5 rights to certain real property. Following a bench trial
6 conducted in 2012, the state court entered judgment in Mr. Li's
7 favor in the approximate amount of \$1.0 million. That judgment
8 now totals approximately \$1,498,422.01 (the "Negligence
9 Judgment").⁹ To the best of this court's knowledge, none of it
10 has been paid.

11 In attempting to collect the Negligence Judgment, Mr. Li
12 discovered that Mr. Yan had transferred a significant asset -
13 real property located at 547 23rd Avenue, San Francisco,
14 California (the "Property") - to relatives, including Mr. Chiu,
15 and later, to two limited liability companies in which Mr. Yan's
16 relatives, including Mr. Chiu, held membership interests. This
17 led Mr. Li to file a new action in the State Court aimed at
18 avoiding those fraudulent transfers.¹⁰ Defendants in the
19 Fraudulent Transfer Action included, among others, Mr. Chiu, Tina
20 Yan (Mr. Yan's mother), and the two LLCs.

21 The Fraudulent Transfer action proceeded to trial, and the
22 jury found each defendant liable for actual and constructive
23 fraud. As to Mr. Chiu, the State Court entered a monetary
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25 ⁸ Li v. Yan, Case No. CGC-10-497990 (San Francisco Sup. Ct.).

26 ⁹ Dkt. 9-2 (Thai Decl.), ¶ 4.

27 ¹⁰ Li v. Chiu, Case No. CGC-14-537574 (San Francisco Sup. Ct.) (the
28 "Fraudulent Transfer Action").

1 judgment in the amount of \$324,167.58. It also declared Mr. Yan
2 the sole owner of all legal and equitable interests in the
3 Property, avoiding his various fraudulent transfers of interests
4 in the Property. After granting Mr. Li's request for an award of
5 attorneys' fees and costs, the State Court amended its judgment
6 to include an award of attorneys' fees totaling \$802,059.50
7 jointly and severally against all defendants, including Mr. Chiu.

8 On appeal, the Court of Appeals directed the State Court to
9 "enter a new amended judgment providing that the attorney fee
10 award is to be imposed solely against defendant Demas Yan."¹¹ In
11 all other respects, the Court of Appeals affirmed the judgment
12 entered in the Fraudulent Transfer Action.

13 On November 16, 2018, the State Court entered the Second
14 Amended Judgment. Among other things, the Second Amended
15 Judgment included a monetary judgment against Mr. Chiu in the
16 amount of \$324,167.58.

17 Beyond its imposition of a monetary judgment against Mr.
18 Chiu, the Second Amended Judgment contained several other
19 provisions pertinent to this action. First, it avoided all
20 relevant transfers of interests in the Property and all relevant
21 transfers of interests in the LLCs to which the Property was
22 conveyed and declared Mr. Yan the "sole owner of all legal and
23 equitable title or interest" in the Property. Next, it expressly
24 permitted Mr. Li to "execute or foreclose on the [Property] to
25 satisfy the [Negligence Judgment] along with the costs and
26 attorneys' fees specified in this Judgment." And finally, it

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¹¹ Dec. 22, 2020 Decision (Dkt. 9-2 (Thai Decl.), **Ex. D**).

1 authorized Mr. Li to "seize, execute on, or foreclose on any real
2 or personal property of any defendant provided that recovery
3 against any defendant shall not exceed the money judgment amount
4 entered above against that specific defendant, and further
5 provided that [Mr. Li's] aggregate recovery shall not exceed [the
6 Negligence Judgment]."

7 Following entry of the Second Amended Judgment, Mr. Chiu
8 (along with other defendants) filed a motion to set aside and/or
9 modify the first judgment and the Second Amended Judgment,
10 arguing that they were void because they granted Mr. Li double
11 recovery by both **(a)** setting aside the numerous fraudulent
12 transfers and permitting Mr. Li to seize and levy upon the
13 Property; **and (b)** awarding Mr. Li a monetary judgment. The State
14 Court entered an order denying the motion to set aside and/or
15 modify the judgments. Mr. Chiu and other defendants appealed
16 that order.

17 In May 2019, the State Court also issued orders requiring
18 the sale of defendants' dwellings to satisfy the Second Amended
19 Judgment.¹² Defendants appealed those orders, insisting the
20 orders were void because the Second Amended Judgment granted
21 relief unauthorized under the UVTA. The Court of Appeals
22 affirmed the sale orders.¹³

23 On appeal from the order denying their motion to set aside
24 and/or modify the judgments, Mr. Chiu and his fellow appellants

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26 ¹² Dkt. 9-2 (Thai Decl.), **Ex. F** (May 17, 2019 decision in Li v. Chiu, Case No. CGC-14-437574).

27 ¹³ Dkt. 9-2 (Thai Decl.), **Ex. P** (December 22, 2020 decision in Li v. Chiu,
28 Case No. A158050).

1 argued that the Second Amended Judgment was "facially void
2 because it grants relief beyond what is authorized by the Uniform
3 Voidable Transactions Act (UVTA) (Civ. Code, § 3439 et seq.).¹⁴
4 Specifically, they argue the [Second Amended Judgment] provides
5 'dual remedies' because it both sets aside the fraudulent
6 transfer and awards a money judgment. They assert the [State
7 Court] acted in excess of its authority under the UVTA."¹⁵

8 The Court of Appeals rejected these arguments and
9 affirmed.¹⁶ The Court of Appeals found that the transferee
10 defendants, including Mr. Chiu, forfeited their "dual remedies"
11 argument by failing to raise it in their prior appeal. The Court
12 of Appeals also found that the Second Amended Judgment was not
13 facially void, and that the transferee defendants failed to
14 provide an adequate record for review.

15 In finding the Second Amended Judgment not facially void,
16 and relying on People v. Amer. Contractors Indem. Co., 33 Cal.
17 4th 653 (2004), the Court of Appeals explained that two types of
18 jurisdictional errors can render a judgment void. First, a court
19 can lack jurisdiction in its "most fundamental or strict sense,"
20 meaning that it lacks the power to hear or determine the case and
21 therefore lacks authority over the subject matter or the parties.
22 Second, a lack of jurisdiction can exist where, even though the
23 court possesses personal and subject matter jurisdiction, the

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26¹⁴ The "UVTA".

27¹⁵ Dec. 22, 2020 Decision (Dkt. 9-2 (Thai Decl.), **Ex. D**).

28¹⁶ Id.

1 court has "no 'jurisdiction' (or power) to act except in a
2 particular manner, or to give certain kinds of relief"

3 " [W]hen a statute authorizes [a] prescribed procedure,
4 and the court acts contrary to the authority thus
5 conferred, it has exceeded its jurisdiction." When a
6 court has fundamental jurisdiction, but acts in excess
7 of its jurisdiction, its act or judgment is merely
8 voidable. That is, its act or judgment is valid until
9 set aside, and a party may be precluded from setting it
10 aside by "principles of estoppel, disfavor of collateral
11 attack or res judicata." Errors which are merely in
12 excess of jurisdiction should be challenged directly,
13 for example by motion to vacate the judgment, or on
14 appeal, and are generally not subject to collateral
15 attack once the judgment is final unless "unusual
16 circumstances were present which prevented an earlier
17 and more appropriate attack."¹⁷

18 The Court of Appeals noted that the transferee defendants
19 attacked the Second Amended Judgment on the grounds that its
20 award of "dual remedies" exceeded the trial court's authority
21 under the UVTA; they did not "claim that the trial court lacked
22 personal or subject matter jurisdiction".¹⁸ "If a judgment, no
23 matter how erroneous, is within the jurisdiction of the court, it
24 can be reviewed and corrected by one of the established methods
25 of direct attack."¹⁹ The court rejected the transferee
defendants' characterization of their appeal as an attempt to
correct a "fundamental jurisdictional error. Instead, their
untimely assertion is that the trial court erroneously exercised
its power. Such a claim does not render the judgment void."²⁰

26 ¹⁷ Dec. 22, 2020 Decision (Dkt. 9-2 (Thai Decl.), **Ex. D**) (citation omitted).

27 ¹⁸ Id.

28 ¹⁹ Estate of Buck, 29 Cal. App. 4th 1846, 1854 (1994).

²⁰ Dec. 22, 2020 Decision (Dkt. 9-2 (Thai Decl.), **Ex. D**).

1 The Court of Appeals did not directly address the merits of
2 the transferee defendants' "dual remedies" attack on the Second
3 Amended Judgment, but it stated:

4 [We note that the remedies provided in the UVTA
5 include both avoidance of the transfer and judgment for
6 the value of the asset transferred, which may be
7 entered against the transferee. (Civ. Code §§ 3439.07,
8 subd. (a) (1), 3439.08, subd. (b) (1) (A).) The UVTA
9 further provides a creditor may obtain: "Any other
10 relief the circumstances may require." (Civ. Code §
11 3439.07, subd. (a) (3) (C).) We also note that the
12 [Second Amended Judgment] states the transfer is "set
13 aside to the extent necessary to satisfy plaintiff's
14 Underlying Judgment" and that: "Plaintiff may seize,
15 execute on, or foreclose on any real or personal
16 property of any defendant provided that recover against
17 any defendant shall not exceed the money judgment
18 amount entered above against that specific defendant,
19 and further provided that *plaintiff's aggregate*
20 *recovery shall not exceed plaintiff's Underlying*
21 *Judgment*"

22 As discussed above, the defendants have provided an
23 inadequate record which precludes any meaningful
24 review. The defendants' argument that the judgment
25 improperly awards a double recovery to Li is not
26 apparent from our reading of the relevant statutes and
27 the [Second Amended Judgment], which expressly provides
28 that the "aggregate recovery shall not exceed
plaintiff's Underlying Judgment."²¹

29 In August 2021, Mr. Li filed new applications in the State
30 Court, asking for orders authorizing the sale of Ms. Yan's
31 dwelling and Mr. Chiu's dwelling in order to satisfy the Second
32 Amended Judgment. The defendants, including Mr. Chiu, opposed
33 these applications, arguing that the value of the dwellings did
34 not justify their sale. They also "rehashed arguments rejected

27 ²¹ Dec. 22, 2020 Decision (Dkt. 9-2 (Thai Decl.), **Ex. D**) (italics in
28 original).

1 in their prior appeals, including their contention that the
2 [Second Amended Judgment] was void under the UVTA."²²

3 The State Court ordered Mr. Li to obtain an appraisal of the
4 properties, and ordered defendants to pay for that appraisal and
5 to cooperate with that process. The State Court warned that any
6 failure on the part of the defendants to comply with its order
7 would result in Mr. Li's appraisal being deemed the "current
8 valid appraisal for the Court's determination of value" of the
9 properties.²³

10 Defendants "did not cooperate with Li's attempt to have the
11 properties appraised, and the court found their failure to
12 cooperate was 'willful, deliberate and intentional.'"²⁴ In
13 December 2021, the State Court issued sale orders. Defendants
14 appealed.

15 In its Aug. 1, 2022 Decision, the Court of Appeals rejected
16 all of defendants' arguments, including their contention that the
17 [Second Amended Judgment] was void for granting relief in excess
18 of the UVTA, which the Court of Appeals declared "a rehash of an
19 argument we have twice rejected."²⁵ The Court of Appeals
20 affirmed the State Court's sale orders.

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25 ²² Aug. 1, 2022 Decision (Thai Decl. (Dkt. 9-2), **Ex. E.**)

26 ²³ Id.

27 ²⁴ Id.

28 ²⁵ Id.

1 Mr. Chiu filed a petition for relief under Chapter 13 of the
2 Bankruptcy Code²⁶ on August 10, 2022. On December 19, 2022, he
3 commenced this adversary proceeding.

4 Mr. Chiu's complaint²⁷ sets forth a single cause of action,
5 which demands a judgment declaring the Second Amended Judgment
6 "void and unenforceable" on the grounds that the State Court
7 exceeded its jurisdiction under the UVTA in entering the Second
8 Amended Judgment. The complaint contends that the Dec. 22, 2020
9 Decision has no *res judicata* effect "because the court merely
10 decided that a judgment cannot be void when there is fundamental
11 jurisdiction, i.e., personal and subject matter jurisdiction . .
12 . Since the court did not decide whether the [Second Amended
13 Judgment] was beyond that authorized by the UVTA, there is no
14 estoppel as to this issue." The complaint goes on to engage in
15 lengthy legal argument as to why the State Court exceeded its
16 power under the UVTA in declaring the fraudulent transfers void
17 while at the same time awarding a money judgment. These
18 arguments are identical to those raised by the defendants before
19 the State Court in their motion to set aside and/or modify the
20 Second Amended Judgment and in their state court appeals.

21 **C. Summary of Arguments**

22 In his Motion, Mr. Li contends that the Second Amended
23 Judgment is final, and that "[n]othing under the bankruptcy laws
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25 ²⁶ Unless otherwise indicated, all statutory citations shall refer to Title 11
26 of the United States Code (the "Bankruptcy Code"). Similarly, all citations
27 to a "Bankruptcy Rule" shall refer to one of the Federal Rules of Bankruptcy
Procedure, and all citations to a "Civil Rule" shall refer to one of the
Federal Rules of Civil Procedure.

28 ²⁷ Dkt. 1.

1 permits [Mr. Chiu] to enlist the United States Bankruptcy Court
2 to reverse a decision of the California Court of Appeal.”²⁸
3 According to Mr. Li, Mr. Chiu is precluded from re-litigating his
4 challenge to the Second Amended Judgment in this court under *res*
5 *judicata* or claim preclusion principles, and has therefore failed
6 to state a claim for relief under Civil Rule 12(b) (6), which
7 applies in this proceeding pursuant to Bankruptcy Rule 7012(b).

8 The Opposition largely repeats *verbatim* the legal argument
9 set forth in Mr. Chiu’s complaint. It also demands that the
10 court enter an order denying the claim Mr. Li has filed in Mr.
11 Chiu’s bankruptcy case – relief that is not requested in the
12 complaint.²⁹

13 **D. Analysis**

14 **1. Rooker-Feldman**

15 “[S]ubject-matter jurisdiction, because it involves a
16 court’s power to hear a case, can never be forfeited or
17 waived.”³⁰ “Moreover, courts . . . have an independent
18 obligation to determine whether subject-matter jurisdiction
19 exists, even in the absence of a challenge from any party.”³¹
20 “[W]hen a federal court concludes that it lacks subject-matter
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24 ²⁸ Dkt. 9-1.

25 ²⁹ Because the complaint does not request an order disallowing Mr. Li’s claim,
26 the court will not address this demand any further.

27 ³⁰ U.S. v. Cotton, 535 U.S. 625, 630 (2002).

28 ³¹ Arbaugh v. Y&H Corp., 546 U.S. 500, 514 (2006).

1 jurisdiction, the court must dismiss the complaint in its
2 entirety."³²

3 The Rooker-Feldman doctrine arises from two cases decided by
4 the Supreme Court of the United States.³³ Rooker "held that when
5 a losing plaintiff in state court brings a suit in federal . . .
6 court asserting as legal wrongs the allegedly erroneous legal
7 rulings of the state court and seeks to vacate or set aside the
8 judgment of that court, the federal suit is a forbidden *de facto*
9 appeal."³⁴ Feldman instructs that a federal court "dealing with
10 a suit that is, in part, a forbidden *de facto* appeal from a
11 judicial decision of a state court must refuse to hear the
12 forbidden appeal. As part of that refusal, it must also refuse
13 to decide any issue raised in the suit that is 'inextricably
14 intertwined' with an issue resolved by the state court in its
15 judicial decision."³⁵

16 In sum, a federal court lacks subject-matter jurisdiction
17 "to hear a direct appeal from the final judgment of a state
18 court."³⁶ Only the Supreme Court of the United States has
19 jurisdiction to hear such an appeal.³⁷

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22 ³² Id.

23 ³³ Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923) and District of Columbia
24 Court of Appeals v. Feldman, 460 U.S. 462 (1983).

25 ³⁴ Noel v. Hall, 341 F.3d 1148, 1156 (9th Cir. 2003).

26 ³⁵ Id. at 1158.

27 ³⁶ Id. at 1154.

28 ³⁷ Id.

1 "[I]n practical reality, [the Rooker-Feldman doctrine] only
2 comes into play . . . when a disappointed party seeks to take not
3 a formal direct appeal, but rather its *de facto* equivalent, to a
4 federal court."³⁸ Rooker-Feldman "is confined to cases . . .
5 brought by state-court losers complaining of injuries caused by
6 state-court judgments rendered before the [federal court]
7 proceedings commenced and inviting [federal court] review and
8 rejection of those judgments."³⁹ Rooker-Feldman applies even
9 when the relevant judgment is erroneous.⁴⁰

10 Rooker-Feldman is subject to some narrow exceptions, only
11 one of which speaks to bankruptcy cases and proceedings.
12 Notwithstanding Rooker-Feldman, "bankruptcy courts are empowered
13 to avoid state judgments,⁴¹ to modify them,⁴² and to discharge
14 them."^{43,44} Mr. Chiu does not base his complaint on any of these
15 sections of the Bankruptcy Code. He contends – as he did
16 repeatedly in the State Court and the state Court of Appeals –
17 that the Second Amended Judgment is void because the State Court
18 exceeded its jurisdiction in avoiding the fraudulent transfers
19 and at the same time awarding a money judgment.

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22 ³⁸ Id. at 1155.

23 ³⁹ Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 281 (2005).

24 ⁴⁰ In re Highway Truck Drivers and Helpers, Teamsters Local No. 107, 100 B.R. 209, 216 (Bankr. E.D. Pa. 1989) (citations omitted).

25 ⁴¹ Sections 544, 547, 548, and 549.

26 ⁴² Sections 1129 and 1325.

27 ⁴³ Sections 727, 1141, and 1328.

28 ⁴⁴ In re Gruntz, 202 F.3d 1074, 1079 (9th Cir. 2000).

1 Mr. Chiu's complaint asks this court to void the Second
2 Amended Judgment on grounds that the state Court of Appeals
3 repeatedly rejected. It is not appropriate for him to run to
4 this court and ask for a different result.

5 The state Court of Appeals specifically found that the
6 challenge raised by Mr. Chiu with respect to the Second Amended
7 Judgment was not a legitimate challenge to the State Court's
8 exercise of its jurisdiction, i.e., its power to enter the Second
9 Amended Judgment. Rather, it found Mr. Chiu's challenge aimed at
10 the manner in which the State Court exercised its authority under
11 the UVTA. That distinction meant that the Second Amended
12 Judgment was not void and not subject to collateral attack. And
13 it found that, by failing to raise any argument as to the merits
14 of the State Court's inclusion of two parallel remedies
15 (avoidance of fraudulent transfers and issuance of a monetary
16 award) in his appeal from the original judgment, Mr. Chiu had
17 waived and forfeited any right to make such an argument in his
18 appeal from the order denying his motion to set aside and/or
19 modify the [Second Amended Judgment].

20 Mr. Chiu asks this court to ignore those conclusions, as
21 well as the fact that the Second Amended Judgment has been final
22 for some time. He demands that this court declare the Second
23 Amended Judgment void for the same reasons the state Court of
24 Appeals rejected. Under Rooker-Feldman, this court is inclined
25 to find that it lacks the subject-matter jurisdiction to do any

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1 such thing. If the court lacks subject-matter jurisdiction, it
2 must dismiss.⁴⁵

3 **2. Res Judicata/Claim Preclusion**

4 Res Judicata "provides that a final judgment on the merits
5 bars future claims by the same parties based on the same causes
6 of action.⁴⁶ "It prohibits the re-litigation of any claims that
7 were raised or could have been raised in a prior action."⁴⁷
8 Application of the doctrine of res judicata relieves litigants
9 "of the cost and vexation of multiple law suits, conserve[s]
10 judicial resources, and, by preventing inconsistent decisions,
11 encourage[s] reliance on adjudication."⁴⁸

12 Claim preclusion applies when there is **(a)** an identity of
13 claims; **(b)** a final judgment on the merits; **and (c)** an identity
14 of parties.⁴⁹ The parties do not dispute that the Second Amended
15 Judgment is final or that an identity of parties exists. The
16 court, however, does not believe there is an identity of claims.

17 An identity of claims depends on whether: **(i)** the two
18 lawsuits arise out of the same transactional nucleus of facts;
19 **(ii)** the rights or interests established in the prior judgment
20 would be destroyed or impaired by prosecution of the second
21 action; **(iii)** the two suits involve infringement of the same

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23 ⁴⁵ Civil Rule 12(b) (1) and Bankruptcy Rule 7012(b).

24 ⁴⁶ Gallardo v. AT&T Mobility LLC, 937 F. Supp. 2d 1128, 1134 (N.D. Cal. 2013)
(citations omitted).

25 ⁴⁷ Id.

26 ⁴⁸ Id.

27 ⁴⁹ Garity v. APWU Nat'l Lab. Org., 828 F.3d 848, 855 (9th Cir. 2016)
(citations omitted).

1 right; **and (iv)** substantially the same evidence is presented in
2 the two actions.⁵⁰

3 The State Court entered the Second Amended Judgment in the
4 Fraudulent Transfer Action. The Fraudulent Transfer Action
5 involved claims that the defendants fraudulently transferred the
6 Property to avoid paying the Negligence Judgment. This action
7 involves a challenge to the Second Amended Judgment on the
8 grounds previously described, none of which would require this
9 court to revisit the jury's findings in the Fraudulent Transfer
10 Action or to evaluate the same evidence received by the jury in
11 the Fraudulent Transfer Action. Accordingly, the court is
12 inclined to conclude that claim preclusion does not apply here.

13 **3. Collateral Estoppel/Issue Preclusion**

14 Notwithstanding the likely inapplicability of claim
15 preclusion, the court is inclined to find that the doctrine of
16 issue preclusion, or collateral estoppel, does apply and prevents
17 relitigation of whether the Second Amended Judgment is void for
18 the reasons Mr. Chiu advocates.

19 "Issue preclusion bars relitigation of issues that have been
20 actually litigated. The doctrine is intended to avoid
21 inconsistent judgments and the related misadventures associated
22 with giving a party a second bite at the apple. Issue preclusion
23 bars relitigation of an issue of fact or issue that: **(1)** is
24 identical to a fact or issue determined in an earlier proceeding;
25 **(2)** was actually decided by a court in an earlier action; **(3)** the
26 issue was necessary to the judgment in the action; **(4)** there was

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28 ⁵⁰ Id. (citations omitted).

1 a final judgment on the merits; **and (5)** the parties are the
2 same.”⁵¹

3 The parties do not dispute that there is an identity of
4 parties between this action, the Fraudulent Transfer Action, and
5 the many appeals arising from the Fraudulent Transfer Action.
6 They also do not dispute that the Second Amended Judgment, as
7 well as all of the appellate decisions following it, are now
8 final.

9 The issue currently before this court is whether the Second
10 Amended Judgment is void. That same issue was actually
11 adjudicated (multiple times): in the State Court when raised by
12 Mr. Chiu’s motion to set aside and/or modify the Second Amended
13 Judgment, and in the appeals Mr. Chiu and his co-defendants have
14 taken from the State Court’s sale orders and its order denying
15 the motion to set aside and/or modify the Second Amended
16 Judgment. This issue also was necessarily decided because, in
17 order to decide Mr. Chiu’s motion to set aside and/or modify the
18 Second Amended Judgment, the State Court needed to decide it.
19 The same is true with respect to the Court of Appeals, which was
20 required to determine whether Second Amended Judgment was void in
21 order to resolve the matters before it.

22 While Mr. Chiu continues to assert that no court has decided
23 whether the State Court exceeded its authority under the UVTA by
24 avoiding the defendants’ many fraudulent transfers and by
25 entering monetary awards, he misses the point. The Court of
26 Appeals has decided – in decisions that are now final – that Mr.

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28 ⁵¹ In re Lopez, 367 B.R. 99, 104 (B.A.P. 9th Cir. 2007) (citing In re Harmon,
250 F.3d 1240, 1245 (9th Cir. 2001)).

1 Chiu's characterization of that issue as jurisdictional was
2 incorrect. According to the Court of Appeals, Mr. Chiu's
3 arguments pertained to the manner in which the State Court
4 exercised its authority – not whether it had authority to do what
5 it did in the first place. This means the Second Amended
6 Judgment was not void, only voidable, and that it remains valid
7 unless and until set aside, something that cannot be accomplished
8 through a collateral attack.

9 As the Court of Appeals explained, even if the State Court
10 erred in crafting the Second Amended Judgment, the only
11 appropriate means by which to challenge such an error is through
12 a direct – not collateral – attack. Mr. Chiu failed to raise his
13 "dual remedies" argument in his appeal from the original judgment
14 in the Fraudulent Transfer Action. While Mr. Chiu may disagree
15 with the Court of Appeals' conclusion, its multiple decisions on
16 this issue clearly hold that the Second Amended Judgment is not
17 void and therefore is not subject to collateral attacks such as
18 that he asserts here.

19 If issue preclusion applies, then Mr. Chiu cannot state a
20 claim on which relief can be granted and dismissal is
21 appropriate.⁵²

22 **4. Dismissal with Prejudice**

23 If the court dismisses a complaint under Civil Rule 12(b) (6)
24 and Bankruptcy Rule 7012, the "court should grant leave to amend
25 even if no request to amend the pleading was made, unless it
26 determines that the pleading could not possibly be cured by the

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28 ⁵² Civil Rule 12(b) (6) and Bankruptcy Rule 7012(b).

1 allegation of other facts.”⁵³ The facts pertinent to this action
2 are undisputed, having been adjudicated by decisions that are
3 final. Accordingly, the court sees no possibility that Mr. Chiu
4 could amend his complaint to assert facts that would render the
5 Second Amended Judgment immune from the doctrine of issue
6 preclusion. Thus, if the court dismisses Mr. Chiu’s complaint,
7 it is inclined to do so with prejudice.

E. Conclusion

9 For the reasons set forth above, the court is inclined to
10 **GRANT** the Motion and to **DISMISS WITH PREJUDICE**.

****END OF TENTATIVE RULING****

²⁸ ⁵³ Cook, Perkiss & Liehe, Inc. v. N. Cal. Collection Serv. Inc., 911 F.2d 242, 247 (9th Cir. 1990).

Court Service List

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